

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THOMAS JOHNSON,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 22-CV-0382
	:	
JOHN WETZEL, <i>et al.</i>,	:	
Defendants.	:	

ORDER

AND NOW, this 7th day of July 2023, upon consideration of Defendants John Wetzel, Jeremy Greiner, Shelly Fox, Dorina Varner, Thomas McGinley, and Lindsay Nye's ("Responding Defendants") Partial Motion to Dismiss (ECF No. 35), as well as Plaintiff's response thereto (ECF No. 41), **IT IS HEREBY ORDERED** as follows:

1. The Motion is **GRANTED** with respect to Plaintiff's claims against Responding Defendants in their official capacities and all such claims are **DISMISSED WITH PREJUDICE**.
2. The Motion is **GRANTED** with respect to Plaintiff's Eighth Amendment claim against Defendant Varner in her individual capacity and that claim is **HEREBY DISMISSED WITH PREJUDICE**.
3. The Motion is **GRANTED** with respect to Plaintiff's Eighth Amendment claim against Defendant Wetzel in his individual capacity and that claim is **HEREBY DISMISSED WITHOUT PREJUDICE**.
4. The Motion is **GRANTED** with respect to Plaintiff's Fourteenth Amendment claim against Defendant Varner in her individual capacity and that claim is **HEREBY DISMISSED WITH PREJUDICE**.
5. The Motion is **GRANTED** with respect to Plaintiff's Fourteenth Amendment claim against Defendant Wetzel in his individual capacity and that claim is **HEREBY DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that for all claims dismissed without prejudice, Plaintiff is granted leave to amend his Complaint. Any such amendment shall be filed no later than **August 15, 2023.**

If Plaintiff does not wish to file a Second Amended Complaint and instead intends to stand on his Amended Complaint as originally pled, he may file a notice with the Court by **August 15, 2023** stating that intent, at which time the Court will issue a final order dismissing the claims against Defendant Wetzel specified *supra*.¹

If Plaintiff fails to file anything by August 15, 2023, the Court will conclude that he intends to stand on his Amended Complaint and will issue a final order dismissing the claims against Defendant Wetzel specified *supra*.²

BY THE COURT:

/s/Wendy Beetlestone, J.

WENDY BEETLESTONE, J.

¹ See *Weber v. McGrogan*, 939 F.3d 232, 241 (3d Cir. 2019) (“If the plaintiff does not desire to amend, he may file an appropriate notice with the district court asserting his intent to stand on the complaint, at which time an order to dismiss the action would be appropriate.” (quoting *Borelli v. City of Reading*, 532 F.2d 950, 951 n.1 (3d Cir. 1976))).

² See *Weber*, 939 F.3d at 239-40 (explaining that a plaintiff’s intent to stand on his complaint may be inferred from inaction after issuance of an order directing him to take action to cure a defective complaint).